

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SUPERCOM, LTD.,

Plaintiff,

-against-

SABBY VOLATILITY WARRANT MASTER FUND
LTD. and WEDBUSH SECURITIES, INC.,

Defendants.
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Case No. 1:21-cv-02857-AT

**REPLY TO
COUNTERCLAIMS**

Plaintiff/Counterclaim Defendant, SuperCom Ltd., (“SuperCom”), by its attorneys, Goldberg Segalla LLP, as and for an answer to the counterclaims of Defendant/Counterclaimant, Sabby Volatility Warrant Master Fund Ltd. (“Sabby”), responds as follows:

THE PARTIES AND JURISDICTION

1. SuperCom admits the truth of the allegations contained in paragraph 1 of the Counterclaims.
2. SuperCom denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Counterclaims.
3. SuperCom denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Counterclaims.
4. SuperCom denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Counterclaims.

SABBY’S INVESTMENT IN DEFENDANT

5. SuperCom admits the truth of the allegations contained in paragraph 5 of the Counterclaims.
6. SuperCom denies the truth of the allegations contained in paragraph 6 of the

Counterclaims.

7. SuperCom denies the truth of the allegations contained in paragraph 7 of the Counterclaims and refers to the Registration Rights Agreement for the true and complete contents thereof.

SUPERCOM'S BREACH OF THE REGISTRATION RIGHTS AGREEMENT

8. SuperCom denies the truth of the allegations contained in paragraph 8 of the Counterclaims.

9. SuperCom denies the truth of the allegations contained in paragraph 9 of the Counterclaims.

10. SuperCom denies the truth of the allegations contained in paragraph 10 of the Counterclaims.

SUPERCOM'S BREACH OF THE WARRANT

11. SuperCom admits the truth of the allegations contained in paragraph 11 of the Counterclaims and refers to the Warrant referenced therein for the true and complete contents thereof.

12. SuperCom admits the truth of the allegations contained in paragraph 12 of the Counterclaims and refers to the Warrant referenced therein for the true and complete contents thereof.

13. SuperCom denies the truth of the allegations contained in paragraph 13 of the Counterclaims.

14. SuperCom denies the truth of the allegations contained in paragraph 14 of the Counterclaims.

15. SuperCom denies the truth of the allegations contained in paragraph 15 of the

Counterclaims.

16. SuperCom denies the truth of the allegations contained in paragraph 16 of the Counterclaims.

17. SuperCom denies the truth of the allegations contained in paragraph 17 of the Counterclaims.

18. SuperCom denies the truth of the allegations contained in paragraph 18 of the Counterclaims.

19. SuperCom denies the truth of the allegations contained in paragraph 19 of the Counterclaims.

FIRST COUNTERCLAIM

(Breach of Contract—Registration Rights Agreement)

20. SuperCom incorporates its responses to paragraphs 1 through 19 as if fully set forth herein.

21. Paragraph 21 of the Counterclaims calls for a legal conclusion to which no response is required. To an extent a responses is required, SuperCom denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Counterclaims.

22. SuperCom denies the truth of the allegations contained in paragraph 22 of the Counterclaims.

23. SuperCom denies the truth of the allegations contained in paragraph 23 of the Counterclaims.

24. SuperCom denies the truth of the allegations contained in paragraph 24 of the Counterclaims.

25. SuperCom denies the truth of the allegations contained in paragraph 25 of the Counterclaims.

SECOND COUNTERCLAIM

(Breach of Contract—Warrant—Compensatory Damages)

26. SuperCom incorporates its responses to paragraphs 1 through 25 as if fully set forth herein.

27. Paragraph 27 of the Counterclaims calls for a legal conclusion to which no response is required. To the extent a response is required, SuperCom denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Counterclaims.

28. SuperCom denies the truth of the allegations contained in paragraph 28 of the Counterclaims.

29. SuperCom denies the truth of the allegations contained in paragraph 29 of the Counterclaims.

THIRD COUNTERCLAIM

(Breach of Contract—Warrant—Liquidated Damages)

30. SuperCom incorporates its responses to paragraphs 1 through 29 as if fully set forth herein.

31. Paragraph 31 of the Counterclaims calls for a legal conclusion to which no response is required. To the extent a response is required, SuperCom denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Counterclaims.

32. SuperCom denies the truth of the allegations contained in paragraph 32 of the

Counterclaims.

33. SuperCom denies the truth of the allegations contained in paragraph 33 of the Counterclaims.

34. SuperCom denies the truth of the allegations contained in paragraph 34 of the Counterclaims.

35. SuperCom denies the truth of the allegations contained in paragraph 35 of the Counterclaims.

FOURTH COUNTERCLAIM

(Specific Performance—Warrant)

36. SuperCom incorporates its responses to paragraphs 1 through 35 as if fully set forth herein.

37. SuperCom denies the truth of the allegations contained in paragraph 37 of the Counterclaims.

38. SuperCom denies the truth of the allegations contained in paragraph 38 of the Counterclaims.

39. SuperCom denies the truth of the allegations contained in paragraph 39 of the Counterclaims.

40. SuperCom denies the truth of the allegations contained in paragraph 40 of the Counterclaims.

41. SuperCom denies the truth of the allegations contained in paragraph 41 of the Counterclaims.

42. SuperCom denies the truth of the allegations contained in the “Wherefor” clause of the Counterclaims.

43. SuperCom denies the truth of any allegations not explicitly admitted in this Reply to Sabby's Counterclaims.

FIRST AFFIRMATIVE DEFENSE

The Counterclaims, in whole or in part, fail to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Sabby's Counterclaims are barred by the doctrine of waiver, estoppel and unclean hands.

THIRD AFFIRMATIVE DEFENSE

Sabby's Counterclaims are barred, in part, because Sabby has not suffered any damages.

FOURTH AFFIRMATIVE DEFENSE

Sabby's Counterclaims are barred by the doctrine of offset.

FIFTH AFFIRMATIVE DEFENSE

Sabby has failed to mitigate its damages.

SIXTH AFFIRMATIVE DEFENSE

Sabby's Counterclaims are barred, in part, by its wrongful conduct and bad faith.

SEVENTH AFFIRMATIVE DEFENSE

Sabby's Counterclaims for liquidated damages are barred because they do not bear a rational relationship to any anticipated or actual damages.

EIGHTH AFFIRMATIVE DEFENSE

Specific performance is unavailable because, if there was a breach of contract, Sabby has an adequate remedy at law.

WHEREFORE, SuperCom demands judgment dismissing Defendant/Counterclaimant Sabby's Counterclaims in their entirety together with costs and attorneys' fees incurred in

defending the Counterclaims, and for such other and further relief as this Court may deem just and proper under the circumstances.

Dated: New York, NY
June 15, 2021

By: 

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